

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALEX LEWIS,

Defendant-Appellee.

UNPUBLISHED

March 18, 2003

No. 238018

Wayne Circuit Court

LC No. 94-09993-01

Before: Cooper, P.J. and Murphy and Kelly, JJ.

PER CURIAM.

Defendant appeals by leave granted an order denying defendant's claim of unlawful arrest and motion to suppress a lineup identification. We affirm.

This Court reviews constitutional issues de novo. *People v Houstina*, 216 Mich App 70, 73; 549 NW2d 11 (1996). When a defendant moves to suppress evidence on the basis that it was illegally obtained, the prosecution bears the burden of showing that the seizure was justified by a recognized exception to the warrant requirement. *People v Wade*, 157 Mich App 481, 485; 403 NW2d 578 (1987). Ordinarily, this Court reviews a trial court's ruling regarding a motion to suppress for clear error. *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983). We review questions of law de novo. *People v Sierb*, 456 Mich 519, 522; 581 NW2d 219 (1998). This Court reviews a trial court's findings of fact for clear error. MCR 2.613(C); *People v Hermiz*, 235 Mich App 248, 255; 597 NW2d 218 (1999).

Absent exigent circumstances or consent, the Fourth Amendment prohibits the police from entering a person's home to make a felony arrest without an arrest warrant and reason to believe that he is at home. *Payton v New York*, 445 US 573, 603; 100 S Ct 1371; 63 L Ed 2d 639 (1980); *City of Troy v Ohlinger*, 438 Mich 477, 484-486; 475 NW2d 54 (1991). This is true regardless of the presence of probable cause. *Payton, supra* at 589, quoting *United States v Reed*, 572 F2d 412, 423 (CA 2, 1978). Although a valid arrest warrant on unrelated charges can justify entry into a defendant's home to make an arrest, the police must have "positive information" or "reliable knowledge" of the warrant at the time of the arrest. MCL 764.15(e); see *United States v Buckner*, 717 F2d 297, 301 (CA 6, 1983).

At issue in this case is whether the police officers knew about defendant's outstanding warrants when they entered his home to make the arrest. At the evidentiary hearing on this issue, the prosecution only called one witness to testify, Detroit Police Officer Carolyn Nichols.

Officer Nichols testified that she participated in defendant's arrest for bank robbery. The arrest took place on August 29, 1994, and was based on surveillance photographs of defendant taken at the bank and other non-specified information provided by a non-specified source. Officer Nichols testified that the information indicated that defendant would be found at the address; she did not indicate that the information contained any facts about the robbery itself. The officers also had a mugshot of defendant that matched the surveillance photographs.

On cross-examination, Officer Nichols testified that it is normal practice and procedure to run a Law Enforcement Information Network (LEIN) check on a person before arresting that person. In this case, the LEIN report in defendant's file did not include the date of the LEIN check because the report was minimized to fit on the piece of paper. Officer Nichols denied that they went to arrest defendant based on the capias warrants. She denied knowledge of whether the police department knew about the capias warrants before defendant was arrested. She also testified that she could not say certainly that the other officers knew about defendant's capias warrants. She stated that they arrested defendant based on the information and because he matched the bank surveillance photographs. Once defendant was arrested, he was interrogated and placed in a lineup where he was identified as the perpetrator. Based on this testimony, there is no evidence that the police had reliable knowledge of defendant's outstanding warrants at the time of his arrest. The sole fact that a LEIN check is normal procedure, simply does not show that the police knew of the capias warrants. There is no basis for concluding that the warrants were in the LEIN system because the prosecution could not even produce a dated LEIN report. Therefore, the trial court erroneously found that "the police probably knew about the outstanding warrant."

Although we find that the entry into defendant's home was unlawful, we must then consider whether the unlawful entry requires exclusion of the lineup evidence. "[T]he exclusionary rule was not intended to grant criminal suspects protection for statements made outside their premises where the police have probable cause to arrest the suspects for committing a crime." *People v Dowdy*, 211 Mich App 562, 570; 536 NW2d 794 (1995), citing *New York v Harris*, 495 US 14; 110 S Ct 1640; 109 L Ed 2d 13 (1990). In *Harris*, the United States Supreme Court held that when the police have probable cause to arrest a suspect, the exclusionary rule does preclude the use of a statement made by the defendant outside the home even though the statement is made after the arrest made in the home in violation of the Fourth Amendment. *Harris*, *supra* at 21.

In *Harris*, the police had probable cause to arrest the defendant. *Id.* at 15. They entered the defendant's house without a warrant or consent and arrested him. *Id.* at 16. Later, at the police station, the defendant signed an inculpatory statement. *Id.* The defendant argued that the statement made at the station should be suppressed because it resulted from the officers' violation of the Fourth Amendment when they entered defendant's home without a warrant or consent. *Id.* The Court noted that "[t]he penalties visited upon the Government, and in turn upon the public, because its officers have violated the law must bear some relation to the purposes which the law is to serve." *Id.* at 17 (citations omitted). The Court declined to apply the exclusionary rule in this context finding that the Fourth Amendment was designed to protect the physical integrity of the home, not to protect statements made outside the premises when the police have probable cause to arrest the suspect. *Id.* The Court noted that in *Payton*, *supra*, it had ruled that a warrantless and consentless search of the home stemmed from the "overriding

respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic”” *Id.* The Court further held:

Nothing in the reasoning of [*Payton*] suggests that an arrest in a home without a warrant but with probable cause somehow rendered unlawful continued custody of the suspect once he is removed from the house. There could be no valid claim here that [the defendant] was immune from prosecution because his person was the fruit of an illegal arrest. [*Id.* at 18, citing *United States v Crews*, 445 US 463, 474; 100 S Ct 1244; 63 L Ed 2d 537 (1980).]

Although *Dowdy* and *Harris* address statements made at the station, the analysis applied in these cases suggests that a lineup conducted at the station should be addressed in the same way. The exclusionary rule was not intended to grant criminal suspects protection for lineup identifications made outside their protected premises where the police have probable cause to arrest them for committing a crime. Applying the rationale set forth in *Dowdy* and *Harris* to this case, we must next determine if the police had probable cause to arrest defendant. “Probable cause to arrest exists where the facts and circumstances within an officer's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.” *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996).

In this case, Officer Nichols testified that the police obtained surveillance photographs of the perpetrator. They matched these photographs with a mugshot of defendant. Because the surveillance photographs were matched with mugshots of defendant, there was probable cause to arrest defendant for the robbery. The fact that the officers did not take the photographs with them to defendant’s house does not undermine this rationale. The trial court, that had the opportunity to view defendant, also determined that the surveillance photographs “obviously match[ed] defendant’s appearance.” This Court gives deference to the trial court’s superior ability to view the evidence and witnesses and will not disturb that court’s findings unless they are clearly erroneous. *People v Marshall*, 204 Mich App 584, 587; 517 NW2d 554 (1994).

Based on the record, there is no basis for us to find that the trial court clearly erred in observing that defendant matched the person in the photographs.¹ Thus, because the police had probable cause to arrest defendant, only fruits of the illegal entry into the home are excluded. Here, the lineup was not the fruit of the entry into the home. Therefore, the trial court properly refused to exclude this evidence.

¹ Even though the trial court erroneously determined that Officer Nichols testified that they had information (other than the photographs) that defendant perpetrated the robbery, this error does not change the outcome because there was otherwise probable cause. Additionally, although the sunglasses were not at issue in this case, they would not have provided probable cause to arrest defendant because they were found after the illegal entry.

Affirmed.

/s/ Jessica R. Cooper
/s/ William B. Murphy
/s/ Kirsten Frank Kelly